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Supreme Court of the United States

OCTOBER TERM, 1931.

No. 582.

WOOLFORD REALTY COMPANY, INC.,
Petitioner,

against

J. T. ROSE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF AMICUS CURIAE, WITH MOTION FOR LEAVE TO FILE.

ROLLIN BROWNE,
Amicus Curiae,
22 Exchange Place,
New York, N. Y.

TAYLOR, BLANC, CAPRON & MARSH,
Of Counsel.

Supreme Court of the United States,

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WOOLFORD REALTY COMPANY, INC.,
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J. T. ROSE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for The Western Pacific Railroad Corporation and Utah Fuel Company, having secured the consent of counsel for the respective parties hereto, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae.*

ROLLIN BROWNE,
Amicus Curiae.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF AMICUS CURIAE.

This brief, by the consent of the Court and with the consent of counsel for the respective parties, is filed by the undersigned as *amicus curiæ*, and on behalf of The Western Pacific Railroad Corporation and Utah Fuel Company, taxpayers whose income tax liability for the calendar years 1925 and 1926 depends upon the decision of questions involved in this case.

The Question.

This case presents the question of whether, under the Revenue Act of 1926, net losses sustained by a corporation in two years when it was not affiliated with any other corporation may be used as deductions in comput-

ing the consolidated net income of that corporation and another corporation in the succeeding year during which the two corporations were affiliated and for which a consolidated return was filed, when the corporation sustaining the net losses has, without consideration of such net losses, no separate net income of a positive quantity in such succeeding year.

The Facts.

The relevant facts are set out in the brief of counsel for petitioner, as well as in the opinion of the United States Circuit Court of Appeals for the Fifth Circuit (53 Fed. (2d) 821). They may be summarized as follows:

	1925	1926	1927
Piedmont Savings Co. ...	*(43,478.25)* (1)	*(410.82)* (1)	*453.80* (2)
Woolford Realty Co.	Not affiliated	Not affiliated	36,587.62 (3)
Consolidated net income, before any net loss deduction			36,133.82

(1) Statutory "net loss".
(2) Separate loss or minus net income.
(3) Separate net income.

POINTS OF ARGUMENT.

Point I. The net loss for 1925 should be allowed in full.

Point II. The effect of Respondent's position on cases where the corporations were affiliated for all three years.

POINT I.

The net loss for 1925 should be allowed in full.

Broadly speaking, the problem presented is that of harmonizing the "consolidated returns" provisions of Section 240 with the "net loss" provisions of Section 206 of the Act. The net loss deduction, like all other deductions allowed in the Act, is allowed to "corporations" or to "taxpayers". An affiliated group of corporations filing a consolidated return is neither a corporation nor a taxpayer, because even where the tax is computed on a consolidated return, it is assessed against the individual corporations comprising the group, according to a prescribed method of allocation.

Swift & Company v. *United States*, 69 Ct. Cls. 171, 38 Fed. (2d) 365.
Sweets Company v. *Commissioner*, 40 Fed. (2d) 436.

No provision of the statute states what shall constitute income of, or what shall be allowed as deductions to, an affiliated group. Section 240 (a) and (b) merely permit affiliated corporations to make a consolidated return of net income and provide that, in such cases, the tax shall be computed and determined as a unit upon the basis of the consolidated return.

Obviously all items of income and deductions of all the corporations comprising the group must be taken into account. (The elimination of inter-company items is no real exception, because, on principles of sound accounting and common sense, that which is one member's gain on an inter-company transaction is the other member's loss.) If the deductions of one member exceed its income items, the excess goes to reduce the taxable income of the other members, or the consolidated net in-